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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

SCOTT MAGEE, on behalf of  
himself and other persons similarly situated,

Plaintiff,

v.

CASTING DYNAMICS, LLC  
d/b/a CASTING360,

Defendant.

Case No.

**CLASS ACTION**

**COMPLAINT FOR VIOLATIONS  
OF:**

1. Negligent Violations of the  
Telephone Consumer Protection  
Act [47 U.S.C. § 227, *ET SEQ.*]
2. Willful Violations of the  
Telephone Consumer Protection  
Act [47 U.S.C. § 227, *ET SEQ.*]

**DEMAND FOR JURY TRIAL**

Plaintiff Scott Magee brings this Class Action Complaint and Demand for Jury Trial against Defendant Casting Dynamics, LLC d/b/a Casting360 (hereinafter "Casting360") to stop its practice of making unwanted and unsolicited text message calls and phone calls to the cellular telephones of consumers nationwide and to obtain redress for all persons injured by its conduct. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

CLASS ACTION COMPLAINT

**NATURE OF THE ACTION**

1  
2 1. Defendant Casting360 is a theatrical talent and booking agency that operates  
3 Casting360.com. Casting360.com is an online service that purports to match its members with  
4 casting directors and agencies.  
5

6 2. In order to obtain more customers, Casting360 sent text message advertisements  
7 to consumers' cellular telephones.

8 3. Casting360 also made unsolicited phone calls to consumers' cellular telephones  
9 in order to obtain more customers.  
10

11 4. Casting360 did not obtain prior express consent from such consumers to make  
12 such text message calls and phone calls and, therefore violated the Telephone Consumer  
13 Protection Act, 47 U.S.C. § 227 ("TCPA").

14 5. The TCPA was enacted to protect consumers from unsolicited and unwanted  
15 calls, exactly like those alleged in this case. Casting360 made these text message calls despite  
16 the fact that neither Plaintiff nor the other members of a putative Class of consumers (defined  
17 below) provided Casting360 with their prior express consent to receive such text messages and  
18 calls.  
19

20 6. By sending spam text messages, Casting360 violated the privacy and statutory  
21 rights of Plaintiff and the Class and caused them harm, not only by subjecting them to the  
22 aggravation that necessarily accompanies the receipt of unsolicited spam text messages, but also  
23 because consumers frequently have to pay their wireless providers for the receipt of such  
24 unsolicited text message calls.  
25

**CLASS ACTION COMPLAINT**



1           13.     Given the relatively low cost associated with sending bulk text messages, many  
2 marketers have turned to disseminating advertisements or promotions through mass text  
3 message campaigns.

4           14.     Seeking to market its services to consumers throughout the United States and, in  
5 turn, grow its customer base, Casting360 engaged in this especially invasive form of  
6 advertising.

7           15.     Casting360 sent unauthorized text messages to the phones of thousands of  
8 consumers across the country.

9           16.     The nature of the text messages sent by Casting360 indicates that it used an  
10 automatic telephone dialing system (“ATDS”). Specifically, the hardware and software used by  
11 Casting360 has the capacity to store, produce, and dial random and sequential numbers, and/or  
12 receive and store lists of telephone numbers, and to dial such numbers, *en masse*, in an  
13 automated fashion without human intervention. Casting360’s automated dialing equipment  
14 includes features substantially similar to a predictive dialer, inasmuch as it is capable of making  
15 numerous text message calls simultaneously (ail without human intervention).

16           17.     In fact, the promotional text message calls alleged herein were exclusively made  
17 and initiated by Casting360 and not by any consumer. Casting360 made, or had made on its  
18 behalf, the same (or substantially the same) text message calls *en masse* to thousands of cellular  
19 telephone numbers.

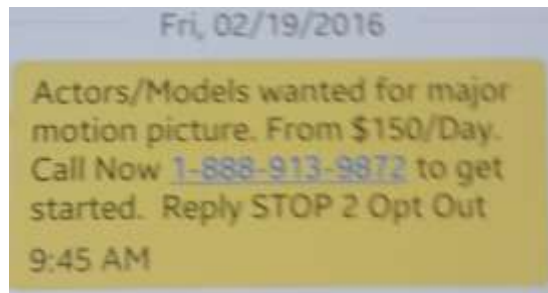
20           18.     While Casting360 sent these unauthorized text messages to consumers to market  
21 its loan services, it never obtained recipients' consent to do so.

1           19. Through its conduct, Casting360 has caused consumers actual harm by sending  
2 unauthorized text message calls at issue. Plaintiff and members of the Class were not only  
3 subjected to the aggregation that necessarily accompanies the receipt of unauthorized text  
4 messages, but also because consumers frequently have to pay their cell phone service providers  
5 for the receipt of such unauthorized text messages.  
6

7           20. Moreover, Plaintiff and members of the Class suffered injuries in the form of  
8 invasion of privacy and violations of their statutory rights, the monies paid to receive  
9 Casting360's unsolicited text messages, the diminished value and utility of their telephone  
10 equipment and telephone subscription service (i.e. the value of such equipment and services is  
11 higher when unencumbered by repeated and harassing text messages), the amount of time lost  
12 answering and fielding unwanted telemarketing text messages, the wear and tear on their  
13 telephone equipment, the loss of battery (which becomes diminished with each incoming phone  
14 call), the loss of battery life (which has a finite number of charging cycles), and electricity costs  
15 required to recharge their cellular phones.  
16  
17

#### 18                           **FACTS SPECIFIC TO PLAINTIFF MAGEE**

19           21. Casting360 sent numerous text messages from telephone number 555888 to  
20 Plaintiff's telephone number, such as:  
21



23  
24  
25  
26  
27  
28                           CLASS ACTION COMPLAINT

1           22. Plaintiff was not a customer nor did he have any prior relationship with  
2 Casting360. Plaintiff did not provide his cellular telephone number to Defendant prior to  
3 receiving the text message. As such, Plaintiff did not provide any form of prior express consent  
4 to receive text messages from Defendant.  
5

6           23. Defendant's intrusive text messages adversely affected Plaintiff's right to  
7 privacy.  
8

9           24. Defendant was and is aware that the above-described text message calls were  
10 being made on a widespread basis, and that the text message calls were being made to  
11 consumers who had not consented to receive them.  
12

### 12                           **CLASS ACTION ALLEGATIONS**

13           25. **Class Definition:** Plaintiff Magee brings this action on behalf of himself and a  
14 class defined as follows:  
15

16                   **Class:** All individuals in the United States whose wireless telephone number  
17 Casting360, or someone on Casting360's behalf, called using an automatic  
18 telephone dialing system or an artificial or prerecorded voice without prior  
19 express written consent of the called party.  
20

21           Excluded from the Class are: (1) any Judge or Magistrate presiding over this action and  
22 members of their families; (2) Defendant, Defendant's subsidiaries, parents, successors,  
23 predecessors, and any entity in which the Defendant or its parents have a controlling interest  
24 and its current or former employees, officers and directors; (3) persons who properly execute  
25 and file a timely request for exclusion from the Class; (4) persons whose claims in this matter  
26 have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and  
27 Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such  
28 excluded persons.

### 28                           **CLASS ACTION COMPLAINT**

1           26.     **Numerosity:** The exact number of Class members is unknown and not available  
 2 to Plaintiff at this time, but it is clear that individual joinder is impracticable. On information  
 3 and belief, Defendant has sent promotional text messages to thousands of consumers who fall  
 4 into the definition of the Class. Class members can be identified through Defendant's records.

5  
 6           27.     **Commonality and Predominance:** There are many questions of law and fact  
 7 common to the claims of Plaintiff and the putative Class, and those questions predominate over  
 8 any questions that may affect individual members of the Class. Common questions for the Class  
 9 include, but are not necessarily limited to the following:

10                   **The Class:**

- 11  
 12           (a)     Whether Defendant's conduct violated the TCPA;  
 13           (b)     Whether Defendant sent text messages using an automatic telephone  
 14                   dialing system ("ATDS"), as contemplated by the TCPA;  
 15           (c)     Whether Defendant systematically sent promotional text messages to  
 16                   persons who did not previously provide it with prior express consent to  
 17                   receive such text message calls; and  
 18           (d)     Whether Plaintiff and the members of the Class are entitled to treble  
 19                   damages based on the willfulness of Defendant's conduct.

20  
 21           27.     **Typicality:** Plaintiffs claims are typical of the claims of other members of the  
 22 Class in that Plaintiff and the Class members sustained damages arising out of Defendant's  
 23 uniform wrongful conduct and unsolicited text message calls.

24  
 25           28.     **Adequate Representation:** Plaintiff will fairly and adequately represent and  
 26 protect the interests of the Class, and has retained counsel competent and experienced in  
 27

28                   CLASS ACTION COMPLAINT

1 complex litigation and class actions. Plaintiff's claims are representative of the claims of the  
2 other members of the Class. That is, Plaintiff and the Class members sustained damages as a  
3 result of Defendant's conduct and received substantially the same text messages. Plaintiff also  
4 has no interests antagonistic to those of the Class, and Defendant has no defenses unique to  
5 Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf  
6 of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor his  
7 counsel has any interest adverse to the Class.  
8

9         29. **Appropriateness:** This class action is also appropriate for certification because  
10 Defendant has acted or refused to act on grounds generally applicable to the Class as a whole,  
11 thereby requiring the Court's imposition of uniform relief to ensure compatible standards of  
12 conduct toward the members of the Class and making final class-wide injunctive relief  
13 appropriate. Defendant's practices apply to and affect the members of the Class uniformly, and  
14 Plaintiff's challenge of those practices hinges on Defendant's conduct with respect to the Class  
15 as a whole, not on facts or law applicable only to Plaintiff. Additionally, the damages suffered  
16 by individual members of the Class will likely be small relative to the burden and expense of  
17 individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it  
18 would be virtually impossible for the members of the Class to obtain effective relief from  
19 Defendant's misconduct on an individual basis. A class action provides the benefits of single  
20 adjudication, economies of scale, and comprehensive supervision by a single court. Economies  
21 of time, effort, and expense will be fostered and uniformity of decisions will be ensured.  
22  
23

24         30. Plaintiff reserves the right to revise the foregoing "Class Allegations" and "Class  
25 Definition" based on facts learned through additional investigation and in discovery.  
26  
27

28                                 CLASS ACTION COMPLAINT



**FIRST CAUSE OF ACTION**

**(Violation of 47 U.S.C. § 227, *et seq.* – Telephone Consumer Protection Act)  
(on behalf of Plaintiff and the Class)**

31. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

32. In an effort to obtain clients, Casting360 made unsolicited and unwanted text message calls to Plaintiff and the Class's cellular telephones without their prior express consent.

33. Casting360 sent the promotional text messages to Plaintiff and the Class's cellular telephone numbers using equipment that had the capacity to store or produce telephone numbers to be called using a random or sequential number generator, and/or receive and store lists of phone numbers, and to dial such numbers *en masse*.

34. Casting360 utilized equipment that sent the promotional text messages to Plaintiff and other members of the putative Class simultaneously and without human intervention.

35. By sending the promotional text messages to Plaintiffs and members of the Class's cellular telephones without prior express consent, and by utilizing an ATDS, Casting360 violated 47 U.S.C. § 227(b)(I)(A)(iii).

36. As a result of Casting360's unlawful conduct, Plaintiff and the members of the putative Class suffered actual damages and have also had their rights to privacy adversely impacted. Plaintiff and the Class are therefore entitled to, among other things, a minimum of \$500 in statutory damages for each such violation under 47 U.S.C. § 227(b)(3)(B).

37. Because Casting360's misconduct was willful and knowing, the Court should, pursuant to 47 U.S.C. § 227(b)(3), treble the amount of statutory damages recoverable by the Plaintiff and the other members of the putative Class.

CLASS ACTION COMPLAINT

1           38.     Additionally, as a result of Casting360's unlawful conduct, Plaintiff and the other  
2 members of the Class are entitled to an injunction under 47 U.S.C. § 227(b)(3)(A) to ensure that  
3 Casting360's violations of the TCPA do not continue into the future.

4  
5                                   **RELIEF REQUESTED**

6           **WHEREFORE**, Plaintiff Scott Magee, individually and on behalf of the Class, prays  
7 for the following relief:

8           (a)     An order certifying this case as a class action under Fed. R. Civ. P. 23(a) &  
9 (b)(3), appointing Plaintiff Scott Magee as Class Representative and his attorneys as Class  
10 Counsel;

11  
12           (b)     Enter a judgment in favor of Plaintiff and the proposed class for all damages  
13 available under the TCPA, including \$500.00 per violation and up to \$1,500.00 per violation if  
14 Defendant willfully violated the TCPA;

15           (c)     An order declaring that Defendant's actions, as set out above, violate the TCPA;

16           (d)     A declaratory judgment that Defendant's telephone calling equipment constitutes  
17 an automated telephone dialing system under the TCPA;

18  
19           (e)     An order requiring Defendant to disgorge any ill-gotten funds acquired as a  
20 result of its unlawful telephone calling practices;

21           (f)     An injunction requiring Defendant to cease all unsolicited text message  
22 activities, and otherwise protecting the interests of the Classes;

23  
24           (g)     Award Plaintiff and the class all expenses of this action, and requiring Defendant  
25 to pay the costs and expenses of class notice and claims administration; and

26           (h)     Such other and further relief as the Court deems just and proper.

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28                                   CLASS ACTION COMPLAINT

**JURY DEMAND**

Plaintiff demands trial by jury on all issues for which a jury trial is allowed.

Respectfully submitted:

*/s/ Erik C. Van Hespen*

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*/s/ William H. Beaumont*

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Attorneys for Plaintiff

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<sup>1</sup> *Pro hac vice* to be applied for

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